



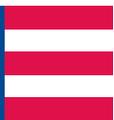
# Birth Rights:

## CITIZENSHIP AND THE CONSTITUTION

by Linda R. Monk, J.D.



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## CITIZENSHIP AND THE CONSTITUTION

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*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.*

*–Fourteenth Amendment*

Do the children of illegal immigrants automatically become U.S. citizens when born on American soil? Under current interpretations of American law, the answer is yes. Since the ratification of the Fourteenth Amendment in 1868, all persons who are born in the United States become citizens if they are “subject to the jurisdiction thereof.” However, the exact meaning of that phrase has become controversial with the rising tide of illegal immigration during the past 20 years.

Some constitutional scholars argue that the intent of the authors of the Citizenship Clause of the Fourteenth Amendment was not to include children born to illegal immigrants; others say that its legislative history is mixed. The U. S. Supreme Court has never ruled explicitly on whether the Citizenship Clause applies to unauthorized immigrants.

Some state legislators as well as members of Congress advocate measures to end birthright citizenship for children of illegal immigrants. They argue that automatic citizenship for so-called “anchor babies” (a term many immigrants find offensive) provides incentives for illegal immigration because these children often qualify for social services and offer their parents a legal tie to the United States that may factor into proposed amnesty programs. U. S. Senator Lindsey Graham of South Carolina has called birthright citizenship a “mistake” that should be corrected by a constitutional amendment.<sup>1</sup>

In Arizona and other states, legislators are proposing to deny state-issued birth certificates to children of illegal immigrants, hoping to spark a Supreme Court challenge.<sup>2</sup> After sweeping victories in state legislatures during November 2010, Republicans have won their largest representation at that level since the 1930s.<sup>3</sup> Many of these candidates ran on a platform of increasing penalties for illegal immigration, some of which included removing birthright citizenship. In addition to Arizona, legislators in the states of Pennsylvania, Georgia, South Carolina, Mississippi, Oklahoma, and Nebraska will sponsor bills to restrict birthright citizenship for children of illegal immigrants, in some cases by issuing different birth certificates for children born to legal versus illegal immigrants.<sup>4</sup>

“The federal government’s failure to enforce our border has functionally turned every state into a border state,” according to state representative Randy Terrill, a Republican in Oklahoma. “This is federalism in action,” he added. “The states are stepping in and filling the void left by the federal government.”<sup>5</sup>

Other political leaders decry plans to end a definition of birthright citizenship they believe is enshrined in the Fourteenth Amendment. Whether such change requires a mere statute or a constitutional amendment is a hotly debated question that may appear before the U.S. Supreme Court.

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## Illegal Immigration by the Numbers

According to the Pew Hispanic Center, the United States faced a record-breaking wave of illegal immigration from 1990 to 2008—increasing almost three-fold from a total population of 3.5 million unauthorized immigrants to 11.9 million.<sup>6</sup> These statistics were based on figures from the U.S. Census, which indicates foreign-born status but does not determine immigration status. The Pew Hispanic Center then adjusts these figures by subtracting an estimate of the number of foreign-born residents lawfully in the United States.<sup>7</sup>

Based on the most recent figures, which are from March 2009, the Pew Hispanic Center reported the following general trends:

- For the first time in two decades, the total number of illegal immigrants has dropped significantly, from a high of 12 million in 2007 to 11.1 million in 2009.<sup>8</sup>
- The average annual number of new illegal immigrants fell dramatically, from 850,000 in March 2005 to 300,000 in March 2009.<sup>9</sup>
- Mexico remains the primary source of illegal immigration, with 60 percent; other Latin American nations represent 20 percent; and South and East Asia have 11 percent.<sup>10</sup>

Unauthorized immigrants are younger and have a higher birthrate than the general U.S. population.<sup>11</sup> Although illegal immigrants are only 4 percent of all adults, their children represent 8 percent of all newborns, as of March 2009.<sup>12</sup> This figure includes children who have only one illegal immigrant as a parent (the other parent may be a U.S. citizen or a legal resident). About 4 million children under the age of 18 as of 2009 have illegal immigrants as parents but were born in the United States; another 1.1 million children are illegal immigrants themselves.<sup>13</sup> Couples with children are only 21 percent of U.S.-born households, but 45 percent of households of unauthorized immigrants.<sup>14</sup> About 37 percent of adult illegal immigrants are parents of children born in the United States, a rate that has remained constant since 2003.<sup>15</sup>

Given these statistics, some elected leaders argue that changing automatic birthright citizenship would help stem the tide of illegal immigration by reducing the incentives for such migrants to have children. Yet *Chicago Tribune* columnist Steve Chapman disagrees:

Why are all these undocumented foreigners producing offspring on U.S. soil, if not because of birthright citizenship? Some obvious explanations: Because they live here, and because they tend to be of childbearing age, since older folks are less likely to trek through the desert for the privilege of harvesting watermelons.

But the chief reason is that having kids is what human beings do, wherever they are and whatever their immigration status. The odd thing would be if these newcomers weren't reproducing.<sup>16</sup>

In addition, a change in the definition of birthright citizenship would not likely apply to children who are born in the United States to a U.S. citizen. Such children would normally be considered U.S. citizens, regardless of the immigration status of the other parent. And according to the Migration Policy Institute, a change in birthright citizenship would only increase the numbers of illegal immigrants by denying legal status to new generations of persons born in the United States. Said Michael Fix, author of an MPI study on such changes: “This perpetuation of hereditary disadvantage based on the legal status of one’s ancestors would be unprecedented in U.S. immigration law.”<sup>16</sup>

## When Did Immigration Become Illegal?

For much of U.S. history, there were no legal limits on immigration, although rules for naturalization varied. During the colonial era, the English colonies in North America took land from Native Americans by both treaty and conquest, and then sought to attract other European immigrants as settlers.

The colonial charters of Virginia and Maryland, for example, allowed government officials to admit and give property rights to “strangers and aliens.”<sup>18</sup> In some colonies, governors and legislators naturalized entire groups of settlers by statute. In 1740 Parliament passed a law that enabled aliens who had lived in the colonies for seven years to become English subjects—if they were not Catholics.<sup>19</sup>

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But after a massive influx of immigrants to the colonies when the Seven Years' War ended, Parliament began to limit the authority of the colonies to authorize special naturalizations in 1773. Such was the outcry that the nascent United States cited this injustice in the Declaration of Independence: "He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands." Most of the immigrants during the colonial era came from England, although other European nations were also included. Many of the English immigrants were indentured servants, including those forcibly sent to America under vagrancy and poor laws.

Immigration became a fierce issue again during the Federalist era. Political parties emerged for the first time, as the new nation began to function under the U. S. Constitution in 1789. Democratic-Republicans, led by Thomas Jefferson, supported the rights of new immigrants, and the Federalists, led by President John Adams, feared that such immigrants were becoming citizens (and voters) too soon. In 1798, the Federalist Congress passed the Alien and Sedition Acts, which extended the required residency for citizenship of a "free white person"<sup>20</sup> from five years to fourteen years.<sup>21</sup> These laws were so unpopular that they contributed to the election of Jefferson as president in 1800.

Three other large waves of immigrants have come to the United States since the nation's founding. From 1820 to the 1870s, about one-third of the immigrants were Irish and another one-third were German. The opening of lands to the west of the Mississippi, accompanied by decimation of the Indian nations, created new opportunities for settlement by Europeans. Also, the gold rush in California led to a significant influx of Chinese immigrants, along with a treaty between the United States and China that allowed the importation of Chinese laborers.

Another wave occurred between 1880 and 1920, with immigrants traveling from Italy, Scandinavia, and Eastern Europe. But during this time the United States also passed its first laws to restrict immigration, the Page Act in 1875<sup>22</sup> and the Chinese Exclusion Act in 1882. The Page Act forbade the importation of convicts and prostitutes, as well as involuntary laborers from Asian countries. The Chinese Exclusion Act ended virtually all immigration from China, and it prohibited Chinese resident aliens from becoming U. S. citizens—a restriction not removed until 1943.<sup>23</sup>

Another wave of immigration has been arriving in the United States since the 1980s, coming chiefly from Latin America. At that point, the number of foreign-born U. S. residents (including naturalized citizens, legal residents, and illegal immigrants) exceeded the previous high during the 1930s.<sup>24</sup> The most recent census figures from 2009 also put the percentage of foreign-born U.S. residents at 12.9 percent,<sup>25</sup> approaching the all-time high of 14.8 percent in 1890.<sup>26</sup> The United States accepts more legal immigrants than all other nations combined.

### **The Constitution and Citizenship**

The U.S. Constitution did not define citizenship when it was written in 1787, although it refers to the term several times. Rather, each of the thirteen states had its own rules for citizenship in that state, which then formed the basis of national citizenship. A person could not be a citizen of the national government without first being a citizen of a state. Congress did pass certain laws regulating residency requirements for becoming a naturalized citizen, but these did not supplant other criteria issued by the states. Not until the Supreme Court's *Dred Scott* decision in 1857 did a clear definition of national citizenship emerge, one that specifically excluded African Americans—both slave and free.

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In the sectional crisis that divided America before the Civil War, the states fiercely disagreed about the legal status of slaves. Northern states, which had abolished slavery, sought to prevent slavery from expanding into the newly created western states formed from the Louisiana Purchase. Southern states feared that slavery would be abolished outright if free states came to outnumber slaveholding states. But under the Missouri Compromise of 1820, slavery was prohibited in any future states created north of Missouri.

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Dred Scott, who had been born a slave in Virginia, filed a lawsuit in 1847 to seek freedom for himself, his wife, and his two daughters, because they had temporarily been taken from the slaveholding state of Missouri into free territory. When the U.S. Supreme Court finally considered Scott’s appeal in 1857, President James Buchanan actively lobbied members of the Court to intercede—hoping a legal ruling would end the political conflict over slavery and avert bloodshed.<sup>27</sup> But his interference backfired.

Chief Justice Roger Taney’s decision did favor the rights of slaveholders, holding that under the Fifth Amendment Congress had no power to deprive them of their “property” in slaves by abolishing slavery in the federal territories. In the process of doing so, Taney first declared that as a slave Dred Scott was not a U. S. citizen, and could not bring a lawsuit in federal court. Moreover, held Taney, an African American could never be a U.S. citizen, whether slave or free:

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit.<sup>28</sup>

But Justice Benjamin R. Curtis disputed Taney’s definition of citizenship under the Constitution. He argued that a “natural born citizen,” as referred to within the document, was to be defined by the states:

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation, at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens. . . .

I can find nothing in the Constitution which . . . deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its Constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States.<sup>29</sup>

The national outcry against the Dred Scott ruling was immediate and intense. By overturning the Missouri Compromise, the Court had sided entirely with slaveholders and made political compromise on the issue impossible. Slaves were to be held wherever slaveholders wanted to take them, so there was no such thing as free territory anymore. The Union could not hold. Out of that firestorm arose the Civil War, from which emerged the Fourteenth Amendment. It added to the Constitution, for the first time, a definition of both national and state citizenship.

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## The Creation of the Fourteenth Amendment

The Constitution “was widely read in the antebellum era as making national citizenship derivative of state citizenship, except in cases involving the naturalization of immigrants and the regulation of federal territories.”<sup>30</sup> The Fourteenth Amendment nationalized the definition of citizenship, rather than relying on the states, and it made state citizenship automatic upon residence in that state. Under the Fourteenth Amendment, all persons “born or naturalized” in the United States and “subject to the jurisdiction thereof” are citizens of both the state in which they reside and the United States. Ratified in 1868, the Fourteenth Amendment was intended to overturn the *Dred Scott* ruling and protect former slaves, who were not recognized as citizens by Southern states even after the Civil War and emancipation.

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At first, the Reconstruction Congress had tried to create a statutory definition of citizenship under the Civil Rights Act of 1866: “All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.” President Andrew Johnson, who opposed the Radical Republicans in Congress, vetoed the measure:

By the first section of the bill all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific states, Indians subject to taxation, the people called gypsies, as well as the entire race designated as blacks, persons of color, negroes, mulattoes, and persons of African blood. Every individual of those races, born in the United States, is, by the bill, made a citizen of the United States.<sup>31</sup>

Congress overrode Johnson’s veto of the bill. But fearing that the Supreme Court might strike down such a law as unconstitutional, Congress moved forward on a proposed Fourteenth Amendment that would accomplish the same goal. Rep. John Bingham, the principal author of the Fourteenth Amendment, had not included a definition of citizenship in his original language. But, according to historian Rebecca Zeitlow, “The Citizenship Clause was added during the debate over the [proposed amendment] in order to reinforce the Citizenship Clause of the 1866 Civil Rights Act and to ensure that *Dred Scott* was overruled.”<sup>32</sup>

However, in a series of revisions in the Senate the Citizenship Clause was altered and its intention became unclear. Some legislators believed that the amendment’s new phrase, “subject to the jurisdiction thereof,” meant exactly the same thing as the language in the Civil Rights Act: “not subject to any foreign power.” Senators Lyman Trumbull of Illinois and Reverdy Johnson of Maryland were very explicit on this issue. Said Trumbull: “What do we mean by ‘subject to the jurisdiction of the United States’? Not owing allegiance to anybody else; that is what it means.”<sup>33</sup> Added Senator Johnson: “Now, all that this amendment provides is that all persons born within the United States, and not subject to some foreign power—for that, no doubt, is the meaning of the committee who have brought the matter before us—shall be considered as citizens of the United States.”<sup>34</sup>

When he introduced the proposed Citizenship Clause, Senator Jacob Howard of Michigan explained its intent:

“Every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country.”<sup>35</sup>

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Senator Willard Saulsbury of Delaware stated flatly that the Citizenship Clause’s object was “simply to declare that Negroes shall be citizens of the United States.”<sup>36</sup> But Senator Edgar Cowan of Pennsylvania asked whether the amendment would also make citizens of the children of Chinese immigrants in California or a “Gypsy born in Pennsylvania.”<sup>37</sup> Senator John Conness of California—himself an Irish immigrant—spoke in favor of that proposition, arguing that his state had already allowed Chinese immigrants to become citizens and their numbers were quite small.<sup>38</sup> Cowan was not persuaded. He added that a foreigner “has a right to the protection of the laws; but he is not a citizen in the ordinary acceptance of the word.”<sup>39</sup>

The one consistent theme in the legislative debate was to ensure that “Indians not taxed” were ineligible for citizenship under the new language of the Fourteenth Amendment. Related to that point, several senators remarked that U.S. jurisdiction over the birthright citizens would have to be complete and total—unlike that over Indian tribes. Another senator pointed out that children of diplomats similarly were not subject to the full jurisdiction of the United States.<sup>40</sup> Beyond its application to Indians, the legislative history regarding the intent of the Citizenship Clause was somewhat mixed, leaving the Supreme Court to determine its construction.

### Citizenship in the Courts

In the *Slaughterhouse Cases* (1873), the Supreme Court first interpreted the Citizenship Clause of the Fourteenth Amendment. It ruled that “[t]he phrase ‘subject to its jurisdiction’ was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States.”<sup>41</sup> And in *Elk v. Wilkins* (1884), the Court held that the Citizenship Clause did not apply to Indians who were born in the United States as part of a tribe, even if they subsequently left the tribe. Such Native Americans could only become naturalized citizens, through a treaty or legislation. Said the Court: “no one can become a citizen of a nation without its consent.”<sup>42</sup> The Court emphasized the meaning of the phrase “subject to the jurisdiction thereof”: “The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance.”<sup>43</sup>

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But in *United States v. Wong Kim Ark* (1898)<sup>44</sup>, the Supreme Court applied British common law (or customary law) to interpret the Citizenship Clause of the Fourteenth Amendment. The Court ruled that a “natural born citizen,” as mentioned in the U.S. Constitution, must be interpreted according to the standards set forth in an English ruling known as *Calvin’s Case* (1608)<sup>45</sup>. Under feudal law, children of friendly aliens owed allegiance to the sovereign in whose dominion they were born. This principle is known as *jus solis* (law of soil), in which citizenship attaches through the land in which one is born. The complementary principle of *jus sanguinis* (law of blood) extends citizenship through the nationality of a child’s parents.

Although these principles were nowhere mentioned in the legislative history of the Fourteenth Amendment, the Supreme Court ruled that Wong Kim Ark, born in the United States to Chinese immigrants, had acquired birthright citizenship. The Court acknowledged that Ark’s parents were still subjects of the Chinese Emperor, and that Ark was a laborer otherwise ineligible for U.S. citizenship under the Chinese Exclusion Act. However, Ark’s parents had established a permanent domicile and legal residence in San Francisco, where he was born.

Moreover, the Court held that the only purpose of the Fourteenth Amendment’s limiting phrase, “subject to the jurisdiction thereof,” was to acknowledge the two exceptions to birthright citizenship recognized under common law. These were children born to foreign ambassadors or occupying enemies. Indians, said the Court, occupied a special category not recognized by common law.

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The dissenting justices totally rejected the Court’s reasoning:

The framers of the Constitution were familiar with the distinctions between the Roman law and the feudal law, between obligations based on territoriality and those based on the personal and invisible character of origin; and there is nothing to show that in the matter of nationality they intended to adhere to principles derived from regal government, which they had just assisted in overthrowing.<sup>46</sup>

In addition, they pointed out that under the Court’s reasoning, no child of American citizens born abroad could become a U.S. citizen without first being naturalized, as place of birth was the only relevant factor. Furthermore, Congress would have absolutely no power to exclude any alien born on U.S. soil. The Court’s interpretation of birthright citizenship, said the dissent, undermined Congress’s constitutional authority to regulate naturalization.

The Supreme Court has not directly addressed the question of whether the children of illegal immigrants are eligible for birthright citizenship under the Fourteenth Amendment. In *INS v. Rios-Pineda* (1985), the Court said in *dicta*, or language not directly part of the holding in the case, that children born in the United States to illegal immigrants are citizens.<sup>47</sup> The Court did rule in *Plyler v. Doe* (1983)<sup>48</sup> that another part of the Fourteenth Amendment, the Equal Protection Clause, does apply to illegal immigrants because they are “persons within the jurisdiction” of a state. This is a different legal standard than that used for the Citizenship Clause.

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### **An Amendment or a Statute?**

Due to the large numbers of illegal immigrants in the United States, some political leaders are proposing to remove birthright citizenship as an automatic right. Other Western nations have acted similarly when faced by unwanted immigration: Portugal in 1981; United Kingdom in 1983; India in 1987; France in 1993; Ireland in 2005; New Zealand in 2006; and Australia in 2007. Currently among developed nations only the United States and Canada have automatic birthright citizenship for children of illegal immigrants.<sup>49</sup>

Certain businesses even promote a “birth tourism” industry designed for pregnant women to travel to the United States on tourist visas and give birth to their children. These women believe that their children, as American citizens, may one day have greater educational opportunity if they decide to leave their native country. Although the exact numbers of such women are unknown, some hotels are creating special package deals to attract “birth tourism” to their establishments.<sup>50</sup>

Judge Richard Posner, a prominent conservative federal judge, has spoken out against such practices:

We should not be encouraging foreigners to come to the United States solely to enable them to confer U.S. citizenship on their future children. But the way to stop that abuse of hospitality is to remove the incentive by changing the rule on citizenship. . . . A constitutional amendment may be required to change the rule whereby birth in this country automatically confers U.S. citizenship, but I doubt it. . . . The purpose of the rule was to grant citizenship to the recently freed slaves, and the exception for children of foreign diplomats and heads of state shows that Congress does not read the Citizenship Clause of the Fourteenth Amendment literally. Congress would not be flouting the Constitution if it amended the Immigration and Nationality Act to put an end to the nonsense.<sup>51</sup>

Rep. Ron Paul (R-TX) and others have introduced legislation to address this issue. Paul sponsored a proposed constitutional amendment that would deny citizenship to children born in the United States whose parents are not citizens or permanent residents. Another proposal is to amend the Immigration and Nationality Act to restrict birthright citizenship to children of mothers who are citizens or legal residents of the United States. With the new Republican majority in the House of Representatives in 2011, such measures may receive more legislative attention.

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Other legislation passed by the states to restrict illegal immigration is already wending its way through the U.S. court system. The federal court for the Ninth Circuit heard arguments in November 2010 about an Arizona law that required law enforcement officers to ask about immigration status of offenders when they had “reasonable suspicion” to believe the person might be an illegal immigrant. “States will push ahead regardless of the Ninth Circuit,” according to Kris Kobach, a Kansas law professor and state official who has helped draft many state immigration laws. According to Kobach, “A lot of people recognize that [a] judge’s decision is very much open to dispute.”<sup>52</sup>

Similarly, the U. S. Supreme Court may be forced to reexamine some of its earlier decisions about the Fourteenth Amendment’s Citizenship Clause. But constitutional scholar Garrett Epps warns against the political consequences of removing birthright citizenship for children of illegal immigrants: “If we permit lawmakers to create a new class of American untouchables, we will be violating fundamental morality, denying our democratic heritage, and creating a social problem that will set our own children’s teeth on edge for many years to come.”<sup>53</sup>

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# Notes

**Some citations in the notes are abbreviated. The full title of the works cited is included in the reading list that follows the notes.**

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<http://www.politico.com/news/stories/0710/40395.html>

<sup>2</sup> <http://washingtonindependent.com/101102/state-legislators-call-for-changes-to-citizenship-law-equate-anchor-babies-to-child-abuse>

<sup>3</sup> “Political Battle on Illegal Immigration Shifts to the States,” *New York Times*, Jan. 1, 2011.  
[http://www.nytimes.com/2011/01/01/us/01immig.html?\\_r=1&nl=todaysheadlines&emc=tha2](http://www.nytimes.com/2011/01/01/us/01immig.html?_r=1&nl=todaysheadlines&emc=tha2)

<sup>4</sup> Shankar Vedantam, “State lawmakers taking aim at amendment granting birthright citizenship,” *Washington Post*, Jan. 5, 2011. <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/05/AR2011010503134.html>

<sup>5</sup> *Ibid.*

<sup>6</sup> Passel, Jeffrey S. and D’Vera Cohn. *A Portrait of Unauthorized Immigrants in the United States*. Washington, DC: Pew Hispanic Center, April 2009, 29. <http://pewhispanic.org/files/reports/107.pdf>

<sup>7</sup> Jeffrey S. Passel and D’Vera Cohn. “U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade,” Washington, DC: Pew Hispanic Center (September 1, 2010), v. <http://pewhispanic.org/files/reports/126.pdf>

<sup>8</sup> *Ibid.*, i.

<sup>9</sup> *Ibid.*, i.

<sup>10</sup> *Ibid.*, iv.

<sup>11</sup> Passel, Jeffrey and Paul Taylor, “Unauthorized Immigrants and Their U.S.-Born Children,” Pew Hispanic Center, August 11, 2010, 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, 4.

<sup>15</sup> *Ibid.*

<sup>16</sup> Chapman, Steve. “Giving Birth to Immigration Fears: Why Birthright Citizenship Is Nothing to Worry About.” *Reason*. August 16, 2010. <http://reason.com/archives/2010/08/16/giving-birth-to-immigration-fe>

<sup>17</sup> [http://www.migrationpolicy.org/news/2010\\_9\\_08.php](http://www.migrationpolicy.org/news/2010_9_08.php)

<sup>18</sup> Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U. S. History*. New Haven: Yale University Press, 1997, 55.

<sup>19</sup> *Ibid.*, 56.

<sup>20</sup> Statutes at Large, 3rd Congress, 2nd Session, Page 414 of 755

<sup>21</sup> Statutes at Large, 5th Congress, 2nd Session, Page 566 of 755

<sup>22</sup> <http://www.uchastings.edu/racism-race/pageact.html>

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- <sup>23</sup> <http://www.ourdocuments.gov/doc.php?flash=old&doc=47>
- <sup>24</sup> <http://www.migrationinformation.org/datahub/charts/final.fb.shtml>
- <sup>25</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/21/AR2009092103251.html>
- <sup>26</sup> <http://www.census.gov/population/www/documentation/twps0029/twps0029.html>
- <sup>27</sup> Kenneth M. Stampp. *America in 1857: A Nation on the Brink*. New York: Oxford University Press, 1990. 67.
- <sup>28</sup> *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857).
- <sup>29</sup> *Ibid.*, 572–73, 576 (1857).
- <sup>30</sup> Akhil Reed Amar, *America’s Constitution: A Biography*. New York: Random House, 2005, 381.
- <sup>31</sup> *Senate Journal*. 39th Cong., 1st sess., March 27, 1866, 279.  
[http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(sj05871\)\):#0580279](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(sj05871)):#0580279)
- <sup>32</sup> Rebecca E. Zeitlow, “The Rights of Citizenship: Two Framers, Two Amendments.” *Journal of Constitutional Law*, Vol. 11:5, 1284.
- <sup>33</sup> *Congressional Globe*, Senate, 1st Sess. 39th Cong. 2893.
- <sup>34</sup> *Ibid.*
- <sup>35</sup> *Ibid.*, 2890.
- <sup>36</sup> *Ibid.*, 2897.
- <sup>37</sup> *Ibid.*, 2890.
- <sup>38</sup> *Ibid.*, 2891.
- <sup>39</sup> *Ibid.*, 2890.
- <sup>40</sup> *Ibid.*, 2897.
- <sup>41</sup> 83 U.S. 36, 73 (1873).
- <sup>42</sup> 112 U.S. 94, 103 (1884).
- <sup>43</sup> 112 U.S. 94, 102.
- <sup>44</sup> 169 U.S. 649.
- <sup>45</sup> *Calvin’s Case*, 7 Rep. 1 (1608).
- <sup>46</sup> 169 U.S. 649, 709 (1898).
- <sup>47</sup> *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985).
- <sup>48</sup> 457 U.S. 202 (1982).
- <sup>49</sup> Jon Feere, “Birthright Citizenship in the United States: A Global Comparison.” Center for Immigration Studies, August 2010. <http://www.cis.org/birthright-citizenship>
- <sup>50</sup> “Birth tourism hits America,” *The Sunday Times*, June 6, 2010.  
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<sup>51</sup> *Oforji v. Ashcroft*, 354 F. 3d 609, 621 (7th Cir., 2003).

<sup>52</sup> “Political Battle on Illegal Immigration Shifts to the States,” *New York Times*, Jan. 1, 2011.  
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